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THE
CRIMINAL EVIDENCE ACT
1898

W. BAUGH ALLEN

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THE CRIMINAL EVIDENCE ACT, 1898.

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CRIMINAL EVIDENCE ACT, 1898.

(61 & 62 VICT. c. 36.)

WITH NOTES,

BY

WILFRED BAUGH ALLEN, ESQ.,

Of the Inner Temple; Barrister-at-Law.

AND A

SHORT HISTORY OF THE ACT,

BY

SIR HARRY BODKIN POLAND, Q.C.,

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Innocence claims the right of speaking [in the witness box], as guilt invokes the privilege of silence.

5

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P R E F A C E.

THIS Edition of the CRIMINAL EVIDENCE ACT, 1898, has been prepared as it is thought that a small book containing the Principal Act, and all the Enactments therein referred to, may be found convenient and handy to practitioners. A few notes to the Act itself have been added.

The general effect of the Act is that on the expiration of two months from the passing thereof, in all cases where a person is charged with a criminal offence, the defendant, and the defendant's wife or husband, will in ALL courts, inferior as well as superior, and whether tried by a jury or not, be competent witnesses for the defence on the application of the defendant, except that with regard to a person charged with neglecting to maintain or deserting his wife or any of his family under the Vagrancy Act, 1824, the wife; and, with regard to a person charged with an offence under s. 80 of the Poor Law (Scotland) Act, 1845, or under ss. 48 to 55 of the Offences against the Person Act, 1861, or under ss. 12 and 16 of the Married Women's Property Act, 1882, or under the Criminal Law Amendment Act, 1885, or under the Prevention of Cruelty to Children Act, 1894, the wife and husband of the defendant will be compellable witnesses, both for the prosecution and the defence.

The prosecution may not comment on the fact that the defendant has not gone into the witness box, or

has not called the wife or husband, but there is no restriction on the right of the court to do so. The defendant, or the wife or husband of the defendant if he or she gives evidence, will be subject to cross-examination like any other witness, with the specific exceptions, so far as the defendant is concerned, referred to in s. 1 (*f*), (*i.*), (*ii.*), (*iii.*) (*post*, p. 2), which, of course, must be carefully studied. The Act will not affect s. 18 of the Indictable Offences Act, 1848, as to a defendant before a magistrate being allowed to make a statement, if he should think fit to do so, or his right to make a statement at the trial in addition to the speech of his counsel. The privilege as to communications between husband and wife during marriage is preserved. The Act does not affect the cases where the wife, or husband, were compellable witnesses at common law (see *post*, p. 14). If the defendant elects to give evidence himself, and no other evidence is given for the defence, he will still have his right to the last word, subject, of course, to the right of reply in the Crown where it exists when no evidence is given for the defence. There are numerous enactments under which the defendant, and the wife or husband, could have been called before the passing of this Act; they differ in their terms, but they are by this Act substantially repealed, and the procedure provided by this Act now governs all those cases. This is only a brief summary of the main provisions of the Act, but the terms of the Act itself must in all cases be consulted, and it is hoped the notes may help to make it clear.

A criticism to the Act has been that it will lead to perjury. A person charged who gives false evidence on his trial is liable, like any other witness, to be prosecuted for perjury. But WILLS, J., at the Summer Flint Assizes, 1898, in his charge to the

Grand Jury, strongly condemned the prosecution of a man for perjury in respect of evidence given by him on his trial at the Spring Assizes, when he was acquitted. The judge's charge is called in question in (1898), 23 Law Journal, 392, where it is said: "The learned judge seems to mean that, if the defendant succeeds, his truthfulness must be taken to be *res judicata*." This can hardly have been the judge's meaning. The true view seems to be that the same issue ought not to be tried again on substantially the same evidence before another jury, because there would be no finality. The second verdict would be no better than the first, and there ought to be a third trial to decide which of the other two verdicts was correct. There can be no doubt that if a person procured his acquittal by perjured evidence, by suborning other witnesses to commit perjury, and by putting before the court false documents, which may have taken the prosecution entirely by surprise, and which they could have had no opportunity of meeting, and the prosecution afterwards obtained clear evidence to show that the defendant's evidence was wilfully false, he not only could, but ought to, be prosecuted for perjury. The Editor of the Law Journal refers to an interesting case tried in the Central Criminal Court, Sydney, New South Wales, where a prisoner who had procured his acquittal by perjury was afterwards prosecuted and convicted for that offence (*R. v. Dean*, 17 N. S. W. Rep. 35). It is obvious that each case, in which it is alleged that the prisoner has committed perjury, must be dealt with according to the facts of the particular case, and that no general rule can be laid down.

As it will be desirable that the practice of all the courts should be the same, it is possible that the judges may, at one of their meetings, agree upon the

course of practice to be adopted by them when trying criminal cases in the future. The Courts of Quarter Sessions and all the inferior courts will be anxious to follow the practice of the judges. After the passing of the Prisoners Counsel's Act, 1836, twelve of the judges met and settled "the course of practice which they thought it would be most advisable to adopt" under that Act. (See 1 Moo. C. C. 495, and 7 C. & P. 676).

The author is indebted to Sir HARRY POLAND for the short and interesting history of this Act contained in this work, and also for revising the proofs of the notes. Mr. C. WILLOUGHBY WILLIAMS, 1, Brick Court, has kindly prepared the Index.

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A
SHORT HISTORY
OF THE
CRIMINAL EVIDENCE ACT, 1898.

THIS Act, which will be known in the future as LORD HALSBURY'S ACT, will make so great a change in the administration of the criminal law that I readily comply with the request made to me to write a short history of it by way of introduction to the practical part of this book. Lord Bowen, in his interesting article on "The Administration of the Law" (*The Reign of Queen Victoria*—vol. 1., p. 287), speaking of the state of the law at the commencement thereof, truly says that "perhaps the most serious blemish of all consisted in the established law of evidence, which excluded from giving testimony all witnesses who had even the minutest interest in the result, and, as a crowning paradox, even the parties to the suit themselves. 'The evidence of interested witnesses,' it was said, 'can never induce any rational belief.' The merchant whose name was forged to a bill of exchange had to sit by, silent and unheard, while his acquaintances were called to offer conjectures and beliefs as to the authenticity of the disputed signature from what they knew of his other writings.

If a farmer in his gig ran over a foot passenger in the road, the two persons whom the law singled out to prohibit from becoming witnesses were the farmer and the foot passenger."

It is desirable to briefly refer to the changes made in the law by Lord Denman's Act and by Lord Brougham's Acts, in order to appreciate the struggle which has been going on for years to establish the policy of the open witness box in all cases. In 1844, Lord Denman's Act (6 & 7 Vict. c. 85), for the first time declared that witnesses who had been convicted of crime, or who had an interest in the case, should no longer be excluded from giving evidence. The preamble of that Act is, I think, worth quoting. "Whereas the inquiry after truth in courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and in civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony." That Act, however, did not make the parties to suits competent witnesses. When the County Court Act of 1846 (9 & 10 Vict. c. 95) was passed, a section was inserted enabling and compelling parties to suits, their wives and all other persons, to give evidence in those Courts, but it was not until the passing of Lord Brougham's Act in 1851 (14 & 15 Vict. c. 99) that parties to suits were made competent witnesses in the

Superior Courts, and not until 1853 (16 & 17 Vict. c. 83) that the husbands and wives of the parties were declared to be admissible witnesses. These last two Acts did not apply to *criminal* proceedings.

Although the tide in favour of *admission* as against *exclusion* had begun to flow, it was not until 1872 that any Act expressly made a person charged with an offence, and the wife or husband of such person, an admissible witness. From that time to the end of the year 1897, about twenty-five Acts have been passed, slightly varying in their terms, rendering such persons competent witnesses. (See a list of these Acts, *post*, p. 57.)

While these Acts were being passed numerous attempts were made to enact one general law on the subject. In 1878 Mr. Evelyn Ashley succeeded in getting such a Bill read a second time in the House of Commons. Mr. Russell Gurney, the Recorder of London, backed that Bill, and Sir Henry James spoke in its favour, but after it was referred to a Select Committee, nothing came of it. Beginning with 1884 down to 1898, general Bills, to the number of fourteen, have been introduced by Lord Bramwell, Sir Henry James, Lord Herschell, Sir Richard Webster, and Lord Halsbury, and nearly all were Government Bills, and, moreover, some of them were mentioned in the Queen's Speeches. The effect of dealing from time to time with specific cases only, was to create the most ridiculous and absurd anomalies, or, as Lord Salisbury described them in the House of Lords, "atrocious anomalies."

I do not stop to give a list of them, but will content myself with referring anyone interested in the subject to a letter in the *Times* of February 14th, 1898.

The Government, at the instance of Lord Halsbury, determined this session to pass an Act applicable to all cases, and thus to create order out of chaos. It is curious that no one, as far as I know, ever said a word against the passing of any one of these Acts until 1897, when a most active opposition was commenced to the law established by such Acts being applied to persons charged with murder, burglary, arson, forgery, larceny, and other crimes. One member of the House of Commons said that the object of the proposed change in the law was to get more convictions; and others outside the House joined in the cry. Another member said that the Bill "was not sportsmanlike—he would rather say not in accordance with our national traditions—to feel sympathy for the prosecution as against the hunted man." A chairman of Quarter Sessions said that it would lead to the conviction of the innocent and the acquittal of the guilty, and few, if any, of the opponents would allow that this gradual and well-considered change in the law was to be made because the state of the law, as it existed before this Act, was not only anomalous, but also unjust.

Prosecuting counsel have always had to cross-examine from time to time the father, mother, son, daughter, brother, and sister of an accused, and have had at times since 1872, and more particularly since 1885, to cross-examine accused persons and the wife and

husband of an accused person, and I know of no case where this unpleasant duty has been performed otherwise than with kindness, and with due consideration for the unhappy position of the witness. Counsel will, I feel sure, whether appearing for a public or private prosecutor in the future as in the past, cross-examine witnesses for the defence, whatever their position may be, solely with the desire of ascertaining whether they are speaking the truth, and not with a view to break them down. Counsel for the prisoner and counsel for the prosecution have different duties to perform. The former has to get an acquittal if he can, whatever the merits of the case may be, provided he acts up to the rule laid down by Sir Alexander Cockburn, Lord Chief Justice of England, in his speech at the banquet given by the Bar of England to M. Berryer on November 8th, 1864. Referring to their distinguished guest, he said: "And allow me to say that, of all those intellectual qualities and attainments which distinguish the eminent and illustrious man whom we have this day met to honour, there is, in my mind, one virtue and one quality essential as the crowning virtue of every advocate—that of having conducted the functions of his great profession with unsullied and untarnished honour. My noble and learned friend Lord Brougham, whose words are the words of wisdom, said that an advocate should be fearless in carrying out the interests of his client; but I couple that with this qualification and this restriction—that the arms which he wields are to be the arms of

the warrior and not of the assassin. It is his duty to strive to accomplish the interest of his clients *per fas*, but not *per nefas*; it is his duty, to the utmost of his power, to seek to reconcile the interests he is bound to maintain, and the duty it is incumbent upon him to discharge, with the eternal and immutable interests of truth and justice." The duty of prosecuting counsel is to assist the Court to arrive at the truth, and, according to my experience, which is limited to Criminal Courts in England, the cross-examination of a prisoner and his witnesses by the prosecuting counsel is not the same thing as the cross-examination of the witnesses for the prosecution by the prisoner's counsel. A prosecuting counsel cannot always conduct a criminal case like a machine, but I am sure that he will ever remember what his duty is, and how implicitly the Judge in the Superior as well as in the Inferior Courts trusts him to bring out, especially in cases where the prisoner is undefended, all relevant facts, whether bearing for or against the prisoner. I have been led into making these remarks because one member of the House of Commons spoke of this right to give evidence as "a trap for the unwary prisoner," and another said that the effect of the Act would "undoubtedly be to establish in this country precisely the same system of merciless interrogatories of prisoners—in the Judge playing most strenuously against the prisoner, which had unfortunately been adopted by the Latin races, but which had fortunately been hitherto rejected by us."

It is astonishing what time, energy, and perseverance are required to root out old prejudices, and therefore I do not anticipate that at first this Act will be a great success. Men wedded to the old system will not like the new. Great care and patience will be required in working the Act, both in jury cases and in cases before Courts of Summary Jurisdiction. Trials will be longer. But having had a very long experience of Criminal Courts, and being scrupulously jealous of the character of English justice, I firmly believe in the wisdom of this change in the law of evidence.

It is surprising to read of the opposition which some of the most beneficial Acts ever passed have met with. Sydney Smith's article in the *Edinburgh Review* on "Counsel for Prisoners" appeared in 1826 (reprinted in his works, vol. 2, p. 199), yet the Prisoners Counsel's Act, enabling prisoners charged with felony to have counsel to speak for them, was not passed until 1836. Anyone reading that article will be puzzled to believe it possible that after its publication such a barbarous and flagrantly and scandalously unjust state of the law could have survived a single session of Parliament. So again with Lord Brougham's Act of 1851. In that year Lord Campbell, writing in his journal under date June 19th, said: "It," that is, the Bill, "is opposed, as might be expected, by the Lord Chancellor. If it passes it will create a new era in the administration of justice in this country. I support it, and I think it will be carried, although all the Common Law judges, with one exception, are hostile to it."

(See vol. 2, *Life of Lord Campbell*, p. 292.) And again, under date November 30th, 1851, he says: "I am now sitting at *Nisi Prius*, working the new Act which permits the parties in a cause to give evidence for themselves. It has made a very inauspicious start—one party, if not both parties, having hitherto been forsworn in every cause. But I still hope that it may operate favourably for the elucidation of truth. One unfavourable effect it will permanently have—to increase the labour of the Judge, for trials must last much longer," etc., and then he has added a note under date October, 1856. "The Bill has since been made to work most admirably: all mankind praise it" (pp. 297-8). Lord Bowen, writing in 1887 in his article before referred to, said: "Many difficulties yet remain to be overcome in devising, if possible, some adequate system for the interrogation and examination of the accused." I believe Lord Halsbury's Act has almost entirely overcome them, and I hope to live to hear "all mankind praise it."

The Lord Chief Justice of England, Lord Russell of Killowen, in a speech he made in the House of Lords, which appears in the *Times* of August 2nd, 1898, said: "There were two points as to which he desired to say a word. Once they admitted an accused person to be accepted as a witness, it seemed to him it was impossible, logically, to maintain any kind of artificial safeguards as to the cross-examination of that witness, and for this reason. The object was, after all, to get at what were the total force and effect of the

statement the man made, and they could not get a true appreciation of its force and effect unless he was subject to the ordinary test of cross-examination. He was, therefore, strongly of opinion that the limitation of cross-examination which the Bill proposed was not logically defensible and could not be long maintained. He admitted that the point raised a very important question, but he should be unwilling, especially at this period of the session, and at this stage, to raise any topic which might imperil the passing of a Bill which he believed would operate for good as far as it went. The measure made the evidence of the husband against the wife and the wife against the husband admissible in certain cases in which it had not hitherto been admissible. It seemed to him the time had come when the evidence of both the one and the other ought to be not only open, but imperative. He availed himself of this opportunity to say that he regarded the Bill as an important step in the right direction, and he could not anticipate that it would work an injustice in the administration of the criminal law." I entirely concur in the opinion so clearly expressed by Lord Russell. In fact, the Government Bill of 1897, introduced by Sir Richard Webster, made the wife or husband of the accused competent and compellable to give evidence, and the accused and all other witnesses were liable to be cross-examined like ordinary witnesses. The opposition, however, to that Bill in the House of Commons, coming as it did from some of the Government's own

supporters, was so great that the Bill of this year had to be altered. The result is that there is now this strange anomaly still remaining : If a father half kills his child, or his wife's child by a former marriage, and he is charged with an offence under the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), his wife can be compelled to give evidence against him, but if he kills it outright and is charged with murder or manslaughter, she cannot give evidence against him, even if willing to do so. In time, no doubt, this will be altered.

I should like to see this Act supplemented by the passing of an Act putting a prisoner's witnesses on the same footing as to *costs* as a prosecutor's witnesses. At present the costs of prisoners' witnesses are only allowed if they have been bound over to give evidence by the committing magistrate under 30 & 31 Vict. c. 35, s. 5.

HARRY BODKIN POLAND.

TEMPLE, *August*, 1898.

THE CRIMINAL EVIDENCE ACT.

CRIMINAL EVIDENCE ACT, 1898.
(61 & 62 VICT. CAP. 36.)

An Act to amend the Law of Evidence.

[12th August 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. Every person charged with an offence (*a*), and the wife or husband (*b*), as the case may be, of the person so charged, shall be a competent witness for the defence (*c*) at every stage of the proceedings (*d*), whether the person so charged is charged solely or jointly with any other person (*e*). Competency of witnesses in criminal cases.

Provided as follows :—

- (a.) A person so charged shall not be called as a witness in pursuance of this Act except upon his (*f*) own application (*g*) :
- (b.) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give

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evidence shall not be made the subject of any comment by the prosecution (h) :

- (c.) The wife or husband of the person charged shall not, save as in this Act mentioned (i) be called as a witness in pursuance of this Act except upon the application of the person so charged :
- (d.) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage (j) :
- (e.) A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged (k) :
- (f.) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed (l) or been convicted (m) of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged ; or

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(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution (*n*) ; or

(iii) he has given evidence against any other person charged with the same offence (*o*).

(g.) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence :

(h.) Nothing in this Act shall affect the provisions of section eighteen of the Indictable Offences Act, 1848 (*p*), or any right of the person charged to make a statement without being sworn (*q*). 11 & 12 Vict
c. 42.

(a) This Act applies to every case in which a person is charged with an offence, with the exception of those cases coming under the Evidence Act, 1877 (40 & 41 Vict. c. 14), which are in substance civil cases, as to which see s. 6 (note), *post*, p. 16.

(b) If a person charged, or the wife or husband of the person charged, does not give evidence, the trial has to be conducted in every way as before the passing of this Act. The onus of proof is not in any way altered, and a person

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charged cannot be convicted unless the prosecution have proved his guilt. However, as noticed hereafter (see note (h), *post*, p. 5) the court (but not the prosecution) may comment on the failure of the accused or the husband or wife to give evidence.

(c) It will be observed that this section only applies to the person charged, or the wife or husband being called "for the defence." The wife and husband are still, however, competent witnesses for the prosecution in those cases in which they were competent witnesses for the prosecution before the passing of the Act (see s. 4 (2), *post*, p. 14), and are made competent witnesses for the prosecution in certain other cases (see ss. 4, 6, and notes thereon, *post*, pp. 14 and 16).

(d) "At every stage of the proceedings": these words do not enable witnesses, made competent by this Act, to give evidence before the grand jury, since their province is only to enquire whether there is a *prima facie* case against the defendant, and before them witnesses for the prosecution alone are examined, and the practice is to put the names only of such witnesses on the back of the bill of indictment.

(e) Before this Act a difficulty arose in the case of *Reg. v. Payne* (1872), L. R. 1 C. C. R. 349; 41 L. J. M. C. 65; 26 L. T. 41; 20 W. R. 390; 12 Cox, C. C. 118. In that case, Payne, G. Owen and J. Owen were apprehended and brought before the magistrates for a poaching affray. The defence set up an *alibi*, and Payne called one Curtis to prove that he and Payne were at the time in question at a place so distant as to render it impossible that Payne could have been one of the poachers. Curtis was bound over to give evidence under 30 & 31 Vict. c. 35, s. 3, but was subsequently identified as one of the party of poachers, and was committed and jointly indicted with the other three prisoners. At the trial the same defence of an *alibi* was set up, and counsel for Payne proposed to call the prisoner Curtis to prove what he had deposed to before the magistrates. The judge held that Curtis was an incompetent witness and could not be called, and the prisoners were all convicted. The ruling of the judge was upheld by the Court for the consideration of Crown Cases Reserved. This difficulty could not now arise since Payne and Curtis could each give evidence for himself and for his co-defendant. In *Reg. v. Thompson* (1872), L. R. 1 C. C. R. 377; 41 L. J. M. C. 112; 26 L. T. 667; 20 W. R. 728; 12 Cox C. C. 202,

it was decided that where two prisoners were indicted and tried together the wife of one was not a competent witness for the other, and under this Act the wife or husband of the person charged can only be called for the defence upon the application of the person so charged.

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(f) As to the masculine gender including females, see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1.

(g) Where the person charged is defended by counsel, and is the only witness for the defence, he must be called "upon his own application immediately after the close of the evidence for the prosecution." (See s. 2, *post*, p. 13.) But in cases where the person charged is not defended by counsel, when is he to make his application? In order that he may "be called immediately after the close of the evidence for the prosecution" he ought to make his application at the close thereof, but he may not know that he is a competent witness. Is the judge to inform him that he can give evidence if he wishes to do so? If, however, the accused should not wish to go into the witness box, the adoption of that course will pointedly call the attention of the jury to the fact that he can go into the witness box, and declines to do so. Where a prisoner is not defended by counsel, no inconvenience would arise from the fact that he was not "called as a witness immediately after the close of the evidence for the prosecution." The practice on this subject will soon be settled by the judges. Perhaps the best course to adopt will be to allow an undefended prisoner to enter upon his defence in the usual way, and the judge must then from the nature of it determine what course he will adopt. The prisoner ought clearly at some time to be informed that he is entitled to give evidence on oath "upon his own application," and he must be asked if he has any witnesses to call, as he may wish to call his wife and other witnesses. (See 28 Vict. c. 18, s. 2, App. D.)

Some judges now say to the prisoner: "Would you like to tell your story where you are, or to tell it on oath in the witness box?"

No difficulty is likely to arise in cases tried before courts of summary jurisdiction.

(h) The judge, however, may comment on the failure of the accused, or wife or husband of the accused, to give evidence. In ordinary cases no doubt he would not make such comment. But there are cases in which it would obviously be his duty to do so; as, for instance, in a case

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where the prisoner accuses the witnesses for the prosecution of perjury, and he knows what the true facts are. Again, take the case of a conversation between the prisoner and the prosecutor, deposed to by the prosecutor, which the prisoner alleges the prosecutor has wilfully misrepresented. In such a case the prisoner clearly ought to go into the witness box and give his account of such conversation. In Mead and Bodkin on the Criminal Law Amendment Act, 1885, 2nd ed., in a note at p. 97, the case of *Reg. v. Widdowes* (1888), tried before A. L. SMITH, J., upon a charge under s. 11 of that Act is referred to. In that case the judge commented strongly upon the fact that the defendant did not go into the witness box to deny or qualify the evidence of the prosecution (Central Criminal Court Sessions Papers, April 23rd, 1888).

(i) That is in cases coming under the enactments mentioned in the Schedule to the Act and at Common Law. (See s. 4 (1) and (2) and note thereon, *post*, p. 14.)

(j) This is an enactment similar to s. 3 of the Evidence Amendment Act, 1853 (16 & 17 Vict. c. 83), and is inserted to make it clear that the Common Law rule is not affected by the Act. "It is doubtful whether this will apply to the case of a widower or divorced person questioned after the dissolution of the marriage as to what had been communicated to him while it lasted." (See Stephen's Digest of the Law of Evidence, 4th ed., note to Art. 110.)

(k) A person charged with an offence, and the wife or husband, as the case may be, are now subject to cross-examination like any other witness, with the exceptions, so far as the person charged is concerned, mentioned in s. 1 of the Act (f.), (i), (ii), (iii).

It will be very important, however, to take care that no improper cross-examination of the person charged takes place (that is, cross-examination as to the excepted matters in s. 1 of the Act), since in a criminal trial, if any evidence not legally admissible against the prisoner is left to the jury, and they find him guilty, the conviction is bad; and this notwithstanding that there was other evidence before them properly admitted and sufficient to warrant a conviction. (*Reg. v. Gibson* (1887), 18 Q. B. D. 537; 56 L. J. M. C. 49; 56 L. T. 367; 35 W. R. 411; 51 J. P. 742; 16 Cox, C. C. 181).

Courts of summary jurisdiction will have to be especially careful to control the cross-examination by the informant under 11 & 12 Vict. c. 43, s. 12. (See *Duncan v. Toms*

(1887), 56 L. J. M. C. 81; 16 Cox C. C. 267; 56 L. T. 719; 51 J. P. 631. See also *Webb v. Catchlove* (1886), 50 J. P. 795; 82 L. T. J. 103; in which case the judges spoke of the impropriety of allowing police constables to cross-examine witnesses. Cf. *Stone's Justices' Manual*, 30th ed., 885.)

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As to the right of a witness to refuse to answer questions that may tend to criminate him, see *Lamb v. Munster* (1883), 52 L. J. Q. B. 46; 47 L. T. 442; 81 W. R. 117; *Ex parte Reynolds* (1882), 20 Ch. D. 294; 51 L. J. Ch. 756; 46 L. T. 508; 30 W. R. 651; 46 J. P. 533; *Reg. v. Garbett* (1847), 1 Den. C. C. 236; 2 C. & K. 474.

(b) Proof that the person charged *has committed* an offence other than that charged in the indictment may be relevant to the issue as tending to show motive, intention, or guilty knowledge. For instance, on an indictment for uttering counterfeit coin evidence may be given of a prior or subsequent uttering by the prisoner of counterfeit coin of either the same or a different denomination from that mentioned in the indictment (*Reg. v. Forster* (1855), Dears C. C. 456; 6 Cox, C. C. 521; 24 L. J. M. C. 134; *Rex v. Whiley* (1804), 2 Leach 983); and upon an indictment for uttering a forged banknote, knowing it to be forged, evidence may be given that the defendant passed other false notes (*Rex v. Millard* (1813), R. & R. 245). So on an indictment for embezzlement, where the embezzlement had been effected by falsifying the accounts, evidence was tendered, and admitted, that on a series of occasions before and after those mentioned in the indictment, similar errors had been made by the prisoner, and advantage taken of them by him (*Reg. v. Richardson* (1860), 2 F. & F. 343; 8 Cox, C. C. 448). So, too, on the trial of an indictment for endeavouring to obtain an advance from a pawnbroker upon a ring by the false pretence that it was a diamond ring, evidence was admitted that two days before the transaction in question the prisoner had obtained an advance from a pawnbroker upon a chain, which he represented to be a gold chain, but which was not so, and endeavoured to obtain from other pawnbrokers advances upon a ring, which he represented to be a diamond ring, but which in the opinion of the witnesses was not so (*Reg. v. Francis* (1874), L. R. 2 C. C. R. 128; 43 L. J. M. C. 97; 30 L. T. 503; 22 W. R. 663; 12 Cox, C. C. 612). These cases sufficiently illustrate the meaning of this section. See also the case of *Makin v. Att.-Gen. for New South Wales*, [1894] A. C. 57;

Sect. 1. 63 L. J. P. C. 41; 69 L. T. 778; 58 J. P. 148; 17 Cox, C. C. 704; where a large number of cases bearing on this subject will be found collected.

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(m) Evidence that the person charged has been *convicted* of any offence other than that charged in the indictment may be relevant to the issue. An instance of this will be found in s. 19 of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112): "Where proceedings are taken against any person for having received stolen goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen; provided that not less than seven days' notice in writing shall have been given to the person accused that proof is intended to be given of such previous conviction; and it shall not be necessary for the purposes of this section to charge in the indictment the previous conviction of the person so charged."

The various enactments providing that the previous conviction charged in the indictment cannot be proved until after the jury has found the prisoner guilty on the substantive charge, are not in any way affected.

(n) It will be noticed that if imputations are made upon the prosecutor, or the witnesses for the prosecution, the person charged will be open to be cross-examined to his credit. However, in order to let in such cross-examination, the imputations need not be made upon all the witnesses for the prosecution, some of whom may be called only to prove formal matters.

(o) This is obviously a very proper provision. For, to take an instance: Where one defendant B. gives evidence in his defence by stating that he is innocent, and that his co-defendant A. committed the crime alone, B. is giving evidence then not only in his own defence but also against A.; and therefore it is right that B.'s character should be cross-examined so as to see to what extent he is a credible witness. But a question will arise whether A.'s counsel ought not also to be allowed to cross-examine B., because A. may know facts which are not known to the prosecution

which will enable him to show that B. is not speaking the truth. A. ought clearly to be allowed to cross-examine B. In such a case it is presumed that B. is only entitled to give evidence against A. so far as is necessary to establish his, B.'s, own innocence.

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Before this Act, where two prisoners were jointly indicted, and a witness called by one of them gave evidence criminatory of the other, the latter was allowed, by himself or his counsel, to cross-examine that witness, and the evidence criminatory of the other was so far evidence for the prosecution as to give the other a right of reply (*Reg. v. Burditt and others* (1855), 6 Cox C. C. 458; *Dear. C. C.* 431; 24 L. J. M. C. 63).

Where two prisoners were indicted for manslaughter, the counsel for one of them having addressed the jury on his behalf, the counsel for the second prisoner did the same, and called witnesses whose evidence tended to show negligence on the part of the first, the counsel for the first prisoner was allowed to cross-examine the witnesses for the second, and to address the jury again, confining himself to comments on the testimony the second prisoner had adduced (*Reg. v. Woods and May* (1853), 6 Cox, C. C. 224).

But in such cases it will be observed that the witness was called in the ordinary way allowed by common law, whereas the position of a person charged who is a witness is regulated entirely by this Act.

In the recent case of *Allen v. Allen and Bell*, [1894] P. 248; 63 L. J. P. 120; 70 L. T. 783; 42 W. R. 549; the head-note is as follows: "The evidence of one party cannot be received in evidence against another party in the same litigation unless the latter has had an opportunity of testing it by cross-examination."

Therefore in a divorce suit the evidence of the respondent is not admissible against a co-respondent if the judge refuses to allow the co-respondent to cross-examine upon it.

Semble, a right of cross-examination exists between a respondent and a co-respondent, and if cross-examination is permitted, the evidence of either party is admissible against the other."

LOPES, L.J., in giving the judgment of the Court of Appeal said (see p. 253):

"It appears to us contrary to all rules of evidence, and opposed to natural justice, that the evidence of one party should be received as evidence against another party, without the latter having an opportunity of testing its truthfulness by cross-examination. In the case of prisoners

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But when two prisoners are jointly indicted, and a witness called by one of them gives evidence criminatory of the other, the latter has a right, by himself or his counsel, to cross-examine that witness (*Reg. v. Burditt*, 6 Cox, C. C. 458). . . . In courts of common law, in the case of co-defendants, one co-defendant would have a right to cross-examine another co-defendant called as a witness, and the evidence of one would be evidence against the other. . . . If a defendant may cross-examine his co-defendant's witnesses, *a fortiori* he may cross-examine his co-defendant if he gives evidence."

The following is another illustration of what might occur under this Act :

Two persons are jointly indicted for stealing a large sum of money. Part of the case against the prisoners is that, being in needy circumstances, they were in possession of large sums of money on the evening of the day on which the money was stolen. The prisoners elect to give evidence. A., giving evidence on his behalf, says that he had just received a sum of money from a man who was afterwards called to prove he had paid it to him. B., giving evidence on his own behalf, admits that the money found on him is his, but says that he received it from A. on the day on which the larceny was committed for some purpose which he mentions. If this is true, A.'s evidence does not account for the whole of the money which he had in his possession on the day of the larceny. An objection is taken by A.'s counsel that this is not evidence against A. under the Act, and he argues that the Act only makes an accused a competent witness "for the defence," and that it does not make him a competent witness against a co-defendant; and objection is further made to the counsel for the Crown putting questions in cross-examination to B., which are directed to clearly test the allegation that B. had got this money from A.

It is submitted that the questions by the Crown ought to be allowed, although the answers would go to establish A.'s guilt, and that A.'s counsel ought to be allowed also to cross-examine B. to his credit, and to recall A. to deny the truth of B.'s evidence, and, further, that A.'s counsel

ought to be allowed to address the jury again on that part of B.'s evidence which affects A. **Sect. 1.**

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(p) Section 18 of 11 & 12 Vict. c. 42, is as follows :

18. After the examinations of all witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial"; and whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.), and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as herein-after mentioned; and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: Provided always, that the said justice or justices before such accused person shall make any statement shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: Provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the person accused, or charged, made at any time, which by law would be admissible as evidence against such person."

11 & 12 Vict.
c. 42, s. 18.
Statement of
accused

Caution.

Admissions,
etc. of
accused made
at other time.

This section must be strictly followed, and as provided by 30 & 31 Vict. c. 35, s. 3: The justice must immediately after obeying the directions of the said 18th section, demand and require of the accused person whether he desires to call any witness. If the accused person shall, in answer to such demand, desire to call any such witness or witnesses, then

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the deposition shall be taken as pointed out in that section. And if the accused person then desires to give evidence himself he should make his application to the justice for that purpose.

A case of *Reg. v. Bird* has been recently tried at quarter sessions, where it appeared that the defendant gave evidence before the magistrates on his own behalf as soon as the evidence for the prosecution was completed, and before the caution was given to him under s. 18. Such evidence was duly read over to him, and he signed the deposition. The usual caution under s. 18 was then given to him, and he then said: "What I have already said is true; I have no witnesses to call." At the sessions the defendant declined to go into the witness box, and the counsel for the prosecution put in such deposition in evidence for the prosecution, and the defendant was convicted. The Recorder reserved the question as to the admissibility of the deposition. The case has gone over to the Michaelmas term (1898). This case, whatever the decision may be, shows the importance of strictly following s. 18 of the Act of 1842, and s. 3 of the Act of 1867, before referred to.

(g) For many years after the Prisoners Counsel's Act, 1836 (6 & 7 Will. 4, c. 114) a prisoner who was defended by counsel was not allowed on his trial to address the jury as well as his counsel (*Reg. v. Boucher* (1838), 8 C. & P. 141; *Reg. v. Rider* (1838), 8 C. & P. 531; *Reg. v. Manzano* (1862), 8 Cox C. C. 321; 2 F. & F. 64; 6 Jur. (N.S.) 406). But of late years the judges have allowed a prisoner to make his own statement to the jury before his counsel addressed the jury, and his counsel also to address the jury (*Reg. v. Weston* (1879), 14 Cox C. C. 346; *Reg. v. Stephens* (1871), 11 Cox C. C. 669; *Reg. v. Shimmin* (1882), 15 Cox C. C. 122) where it was expressly laid down that this rule of practice is now approved by the judges of the High Court.

This rule of practice was followed in *Reg. v. Doherty* (1887), 16 Cox C. C. 306, and in several other cases reported only in the Central Criminal Court Sessions Papers. The cases will all be found collected in Warburton's Leading Cases of Criminal Law, 2nd ed., p. 260. (See particularly the observations of Mr. Justice HAWKINS on this subject in *Reg. v. Everett*, Central Criminal Court Sessions Papers, vol. 97, p. 335, quoted by Mr. Warburton at p. 263.)

Where a prisoner is not defended by counsel, see the latter half of s. 2 of 28 Vict. c. 18, App. D.

2. Where the only witness to the facts of the case **Sect. 2.**
 called by the defence is the person charged, he shall be Evidence of
 called as a witness immediately after the close of the person
 evidence for the prosecution (a). charged.

(a) This section is only of importance in cases where the person charged is defended by counsel. The counsel for the prosecution will be entitled, directly after the person charged has given his evidence, "to address the jury a second time in support of his case for the purpose of summing up the evidence against such prisoner or defendant," and in doing so he can comment upon the evidence given by the person charged; counsel for the defence will then make his speech for the defence, to which no reply can be made by the prosecution. The section appears to have reference to the procedure under s. 2 of 28 Vict. c. 18. (See App. D.)

Where the person charged is not defended by counsel if it should turn out at any time in the course of the defence that he desires to give evidence, he would be entitled to do so, although it could not be said that he was "called immediately after the close of the evidence for the prosecution."

This section does not apply to the case where a justice is hearing a case with a view to the committal of the person charged to be tried for an indictable offence, because s. 1 (h) expressly enacts that with regard to such cases the procedure must still be governed by s. 18 of the Indictable Offences Act, 1848. (See note (p), *ante*, p. 11.)

3. In cases where the right of reply depends upon **Right of**
 the question whether evidence has been called for the **reply.**
 defence, the fact that the person charged has been
 called as a witness shall not of itself confer on the
 prosecution the right of reply (a).

(a) It will be noticed that if the wife or husband of the person charged, or any other witness, be called for the defence, the prosecution still has the right of reply.

As to the right of reply possessed by the law officers of the Crown, or counsel representing them, see 2 Reports of State Trials (N.S.) App. E., at p. 1019. At a meeting of the Judges in December, 1884, it was resolved: That in those Crown cases in which the Attorney or Solicitor-General is

Sect. 3.**NOTE.**

personally engaged, a reply, where no witnesses are called for the defence, is to be allowed as of right to the counsel for the Crown, and in no others. (5 Reports of State Trials (N.S.) p. 3, n. (c).)

See as to right of reply generally, *Reg. v. Burns and Others* (1887), 16 Cox C. C. 195; Warburton's Leading Cases in Criminal Law, 2nd ed., p. 258.

Calling of
wife or
husband in
certain cases

4.—(1.) The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged (a).

(2.) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person (b).

(a) It will be observed this applies only to the wife or husband, not to the person charged.

A person charged with an offence, and the wife or husband of a person so charged, is under this Act a competent witness only for the defence, and only on the application of the person charged, as before stated; but with regard to a person charged with an offence under any of the enactments mentioned in the schedule to the Act the wife or husband of the person charged is a compellable witness both for the prosecution and the defence. As to offences under the first enactment mentioned in the schedule to the Act, the wife of a person charged with neglecting to maintain or deserting his wife or any of his family under the Vagrancy Act, 1824, was not a competent witness (*Reeve v. Wood* (1866), 5 B. & S. 364; 34 L. J. M. C. 15). She is now competent and compellable. Although in some of the cases referred to in the schedule to the Act the wife or husband before this Act was only competent but not compellable, this section, as before mentioned, makes the wife or husband in all the cases referred to a compellable witness.

(b) At common law in cases in which personal injuries have been effected by violence or coercion by the husband upon the wife or wife upon the husband, such wife or

husband is a competent and compellable witness. (See *Reg. v. The Mayor of London* (1836), 16 Q. B. D. 772, per A. L. SMITH, J., at p. 775; 55 L. J. M. C. 118; 54 L. T. 761; 34 W. R. 544; 50 J. P. 614; 16 Cox C. C. 81; Stephen's Digest of the Law of Evidence, Art. 108; Wills on Evidence, 84; *Reeve v. Wood* (1866), 5 B. & S. 364; 34 L. J. M. C. 15). The wife or husband are also supposed to be competent and compellable witnesses in cases of treason, but this is doubtful.

Sect. 4.

NOTE.

5. In Scotland, in a case where a list of witnesses is required, the husband or wife of a person charged shall not be called as a witness for the defence, unless notice be given in the terms prescribed by section thirty-six of the Criminal Procedure (Scotland) Act, 1887 (a).

Application
of Act to
Scotland.50 & 51 Vict.
c. 35.

(a) That section is as follows :

36. It shall not be competent for the person accused to state any special defence unless a plea of special defence shall be tendered and recorded at the first diet, or unless cause be shown to the satisfaction of the court for a special defence not having been lodged till a later day, which must in any case not be less than two clear days before the second diet, and it shall not be competent for the person accused to examine any witnesses or to put in evidence any productions not included in the lists lodged by the prosecutor, unless written notice of the names and designations of such witnesses and of such productions shall have been given to the Procurator-Fiscal of the district of the second diet when the case is to be tried in the Sheriff Court, or to the Crown Agent where the case is to be tried in the High Court of Justiciary, at least three clear days before the day on which the jury is sworn to try the case against him, or unless the accused person shall show before a jury is sworn to try the case against him that he was unable to give the full notice of three days in regard to any witnesses he may desire to examine or productions he may desire to make, and where this is shown the court shall give such remedy to the prosecutor by adjournment or postponement of the trial or otherwise as shall seem just, and a copy of every written notice hereby required shall be lodged by the person accused with the sheriff clerk of the district in which the second diet is to be held, or in any case the second diet of which is to be held in the High Court of Justiciary in Edinburgh with the Clerk

Written
notice of
special
defence.

Sect. 5. of Justiciary, at or before the second diet, for the use of the court.

NOTE.

Provision as to previous Acts.

6.—(1.) This Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act, except that nothing in this Act shall affect the Evidence Act, 1877 (*a*).

40 & 41 Vict. c. 14.

(2.) But this Act shall not apply to proceedings in courts martial unless so applied—

29 & 30 Vict. c. 109.

(a) as to courts martial under the Naval Discipline Act, by general orders made in pursuance of section sixty-five of that Act; and

44 & 45 Vict. c. 58.

(b) as to courts martial under the Army Act by rules made in pursuance of section seventy of that Act.

(a) The enactments in force at the commencement of this Act will be found in Appendix C., *post*, p. 56. This Act is applied to all these cases by this section and s. 4, *ante*, p. 14. So far as these Acts are rendered obsolete they will, no doubt, be repealed by one of the Statute Law Revision Acts. This Act, as pointed out (s. 1, note (*a*), *ante*, p. 3), applies to all criminal proceedings, with the exception of cases coming under the Evidence Act, 1877 (40 & 41 Vict. c. 14). That Act is as follows:

Defendant and wife or husband of defendant may be witness in certain trials.

1. On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

The reason why the defendant, and the wife or husband of the defendant, are by that Act made admissible and compellable to give evidence, either for the prosecution or the defence, is because the proceedings are in substance of a civil nature, although the form of them is criminal. An illustration of this will be found in the case of *Reg. v. Stephens* (1866), L. R. 1 Q. B. 702; 35 L. J. Q. B. 251;

14 L. T. 593; 14 W. R. 859; where the defendant was indicted for a nuisance to a river, and MELLOR, J., at p. 708, says: "It is quite true that this in point of form is a proceeding of a criminal nature, but in substance I think it is in the nature of a civil proceeding."

Sect. 6.

NOTE.

Proceedings at law on the Revenue side of the Exchequer are not criminal proceedings, and are governed by the Evidence Act, 1851 and 1853 (14 & 15 Vict. c. 99, and 16 & 17 Vict. c. 83), which apply to all civil proceedings. (See Crown Suits Acts, 1865 (28 & 29 Vict. c. 104), s. 34, and the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36).) Before these Acts, in the *Att.-Gen. v. Radloff* (1854), 10 Ex. 84; 23 L. J. Ex. 240, POLLOCK, C.B., and PARKE, B., thought that revenue proceedings were criminal; PLATT, B., and MARTIN, B., that they were civil.

Bastardy proceedings are within the Evidence Acts, 1851 and 1853, and are not criminal proceedings within this Act (*Reg. v. Lightfoot* (1856), 6 E. & B. 822; 25 L. J. M. C. 115; 4 W. R. 655; *Reg. v. Berry* (1859), 28 L. J. M. C. 86; Bell, 46; 32 L. T. (o.s.) 323; 7 W. R. 229).

A suit for a divorce is a purely civil, and in no sense a criminal proceeding (*Mordaunt v. Moncrieff* (1874), L. R. 2 H. L. (Sc.) 374; 43 L. J. P. & M. 49; 30 L. T. 649; 22 W. R. 12; *Redfern v. Redfern*, [1891] P. 139; 60 L. J. P. 9; 64 L. T. 63; 55 J. P. 37).

7.—(1.) This Act shall not extend to Ireland.

Extent,
commence-
ment, and
short title.

(2.) This Act shall come into operation on the expiration of two months from the passing thereof.

(3.) This Act may be cited as the Criminal Evidence Act, 1898.

Schedule.**SCHEDULE.****Section 4.****ENACTMENTS REFERRED TO.***

Session and Chapter.	Short Title.	Enactments referred to.
5 Geo. 4 c. 83 - -	The Vagrancy Act, 1824.	The enactment punishing a man for neglecting to maintain or deserting his wife or any of his family.
8 & 9 Vict. c 83 -	The Poor Law (Scotland) Act, 1845	Section eighty.
24 & 25 Vict. c. 100 -	The Offences against the Person Act, 1861.	Sections forty-eight to fifty-five.
45 & 46 Vict. c. 75 -	The Married Women's Property Act, 1882.	Section twelve and section sixteen.
48 & 49 Vict. c. 69 -	The Criminal Law Amendment Act, 1885.	The whole Act.
57 & 58 Vict. c. 41 -	The Prevention of Cruelty to Children Act, 1894.	The whole Act.

* See Appendix B., *post*, p. 23, where these enactments are set out.

APPENDIX A.

CRIMINAL EVIDENCE ACT, 1898.

(61 & 62 VICT. CAP. 36.)

An Act to amend the Law of Evidence.

[12th August 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. Provided as follows :—

Competency
of witnesses
in criminal
cases

- (a.) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application :
- (b.) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged to give evidence shall not be made the subject of any comment by the prosecution :
- (c.) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged :
- (d.) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his

**App. A.
Sect. 1.**

wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage:

- (e.) A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged :
- (f.) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged ; or
 - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution ; or
 - (iii) he has given evidence against any other person charged with the same offence
- (g.) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence :
- (h.) Nothing in this Act shall affect the provisions of section eighteen of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

11 & 12 Vict.
c. 42.

Evidence of
person
charged.

2. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

3. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply. **App. A. Sect. 3.** **Right of reply.**

4.—(1.) The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged. **Calling of wife or husband in certain cases.**

(2.) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

5. In Scotland, in a case where a list of witnesses is required, the husband or wife of a person charged shall not be called as a witness for the defence, unless notice be given in the terms prescribed by section thirty-six of the Criminal Procedure (Scotland) Act, 1887. **Application of Act to Scotland.**

50 & 51 Vict.
c. 35.

6.—(1.) This Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act, except that nothing in this Act shall affect the Evidence Act, 1877. **Provision as to previous Acts.**

40 & 41 Vict.
c. 14.

(2.) But this Act shall not apply to proceedings in courts martial unless so applied—

(a) as to courts martial under the Naval Discipline Act, 29 & 30 Vict. by general orders made in pursuance of section c. 109. sixty-five of that Act; and

(b) as to courts martial under the Army Act, by rules 44 & 45 Vict. made in pursuance of section seventy of that c. 58. Act.

7.—(1.) This Act shall not extend to Ireland.

(2.) This Act shall come into operation on the expiration of two months from the passing thereof. **Extent, commencement, and short title.**

(3.) This Act may be cited as the Criminal Evidence Act, 1898.

**App. B.
Sect. 54.**

Forcible
abduction of
any woman
with intent
to marry her.

54. Whosoever shall, by force, take away or detain against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for any term not exceeding fourteen years . . .

Abduction of
a girl under
sixteen years
of age.

55. Whosoever shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

MARRIED WOMEN'S PROPERTY ACT, 1882.

(45 & 46 VICT. CAP. 75.)

* * * * *

[18th August 1882.]

* * * * *

Remedies of
married
woman for
protection
and security
of separate
property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso herein-after contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were

living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

App. B.
Sect. 12.

* * * * *

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

of Act of wife
liable to
criminal
proceedings

* * * * *

*CRIMINAL LAW AMENDMENT ACT, 1885.

(48 & 49 VICT. CAP. 69.)

* * * * *

[14th August 1885.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Criminal Law Amendment Act, 1885. Short title.

PART I.

Protection of Women and Girls.

2. Any person who—

- (1.) Procures or attempts to procure any girl or woman under twenty-one years of age, not being a common prostitute, or of known immoral character, to have unlawful carnal connexion, either within or without the Queen's dominions, with any other person or persons ; or
- (2.) Procures or attempts to procure any woman or girl to become, either within or without the Queen's dominions, a common prostitute ; or

Procuration.

* See the Treatise on this Act, 2nd ed., by Mead and Bodkin.

**App. B.
Sect. 2 (3).**

- (3.) Procures or attempts to procure any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel elsewhere ; or
- (4.) Procures or attempts to procure any woman or girl to leave her usual place of abode in the United Kingdom (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the Queen's dominions,

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness, unless such witness be corroborated in some material particular by evidence implicating the accused.

Procuring
defilement
of woman by
threats or
fraud or
administering
drugs.

3. Any person who—

- (1.) By threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connexion, either within or without the Queen's dominions ; or
- (2.) By false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion, either within or without the Queen's dominions ; or
- (3.) Applies, administers to, or causes to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl,

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

4. Any person who—

unlawfully and carnally knows any girl under the age of thirteen years

**App. B.
Sect. 4.**

shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Defilement of girl under thirteen years of age.

Any person who attempts to have unlawful carnal knowledge of any girl under the age of thirteen years shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that in the case of an offender whose age does not exceed sixteen years, the court may, instead of sentencing him to any term of imprisonment, order him to be whipped, as prescribed by the Act of the twenty-fifth and twenty-sixth Victoria, chapter eighteen, intituled "An Act to amend the law as to the Whipping of Juvenile and other Offenders," and the said Act shall apply, so far as circumstances admit, as if the offender had been convicted in manner in that Act mentioned; and if, having regard to his age and all the circumstances of the case, it should appear expedient, the court may, in addition to the sentence of whipping, order him to be sent to a certified reformatory school, and to be there detained for a period of not less than two years and not more than five years.

The court may also order the offender to be detained in custody for a period of not more than seven days before he is sent to such reformatory school.

Where, upon the hearing of a charge under this section the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the court or justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received, though not given upon oath, if, in the opinion of the court or justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth: Provided that no person shall be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution shall be corroborated by some other material

**App. B.
Sect. 4.**

evidence in support thereof implicating the accused: Provided also, that any witness whose evidence has been admitted under this section shall be liable to indictment and punishment for perjury in all respects as if he or she had been sworn.

Whereas doubts have been entertained whether a man who induces a married woman to permit him to have connexion with her by personating her husband is or is not guilty of rape, it is hereby enacted and declared that every such offender shall be deemed to be guilty of rape.

Defilement of girl between thirteen and sixteen years of age.

5. Any person who—

- (1.) Unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years and under the age of sixteen years; or
- (2.) Unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile,

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that it shall be a sufficient defence to any charge under sub-section one of this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years.

Provided also, that no prosecution shall be commenced for an offence under sub-section one of this section more than three months after the commission of the offence.

Householder, etc. permitting defilement of young girl on his premises.

6. Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof—

induces or knowingly suffers any girl of such age as is in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally,

- (1) shall, if such girl is under the age of thirteen years, be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour; and
- (2) if such girl is of or above the age of thirteen and under the age of sixteen years, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

**App. B.
Sect. 6 (1).**

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of sixteen years.

7. Any person who—

with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally—

Abduction of girl under eighteen with intent to have carnal knowledge.

takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her,

shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour.

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury that the person so charged had reasonable cause to believe that the girl was of or above the age of eighteen years.

8. Any person who detains any woman or girl against her will—

- (1.) In or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man, or generally, or

Unlawful detention with intent to have carnal knowledge.

(2.) In any brothel, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be

**App. B.
Sect. 8.**

imprisoned for any term not exceeding two years, with or without hard labour.

Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel, if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or, where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the direction of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

Power, on indictment for rape, to convict of certain misdemeanors.

9. If upon the trial of any indictment for rape, or any offence made felony by section four of this Act, the jury shall be satisfied that the defendant is guilty of an offence under section three, four, or five of this Act, or of an indecent assault, but are not satisfied that the defendant is guilty of the felony charged in such indictment, or of an attempt to commit the same, then and in every such case the jury may acquit the defendant of such felony, and find him guilty of such offence as aforesaid, or of an indecent assault, and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such offence as aforesaid, or for the misdemeanor of indecent assault.

Power of search.

10. If it appears to any justice of the peace, on information made before him on oath by any parent, relative, or guardian of any woman or girl, or any other person who, in the opinion of the justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such justice, such justice may issue a warrant authorising any person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a justice of the peace; and the justice of the peace

before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

App. B.
Sect. 10.

The justice of the peace issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally, and—

- (a.) Either is under the age of sixteen years; or
- (b.) If of or over the age of sixteen years, and under the age of eighteen years, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her; or
- (c.) If of or above the age of eighteen years is so detained against her will.

Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom.

Provided always, that every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other officer of police, who shall be accompanied by the parent, relative, or guardian or other person making the information, if such person so desire, unless the justice shall otherwise direct.

11. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour. Outrages on decency.

12. Where on the trial of any offence under this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl under the age of sixteen has been caused, encouraged, or favoured by her father, mother, Custody of girls under sixteen.

**App. B.
Sect. 12.**

guardian, master, or mistress, it shall be in the power of the court to divest such father, mother, guardian, master, or mistress of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one, or any age below this as the court may direct, and the High Court shall have the power from time to time to rescind or vary such order by the appointment of any other person or persons as such guardian, or in any other respect

PART II.*Suppression of Brothels.*

Summary
proceedings
against
brothel
keeper, etc.

13. Any person who—

- (1.) keeps or manages or acts or assists in the management of a brothel, or
- (2.) being the tenant, lessee, or occupier of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution, or
- (3.) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel,

shall on summary conviction in manner provided by the Summary Jurisdiction Acts be liable—

- (1.) to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding three months, with or without hard labour, and
- (2.) on a second or subsequent conviction to a penalty not exceeding forty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding four months, with or without hard labour;

and in case of a third or subsequent conviction such person may, in addition to such penalty or imprisonment as last aforesaid, be required by the court to enter into a recognizance, with or without sureties, as to the court seems

meet, to be of good behaviour for any period not exceeding twelve months, and in default of entering into such recognizance, with or without sureties (as the case may be), such person may be imprisoned for any period not exceeding three months, in addition to any such term of imprisonment as aforesaid.

Any person on being summarily convicted in pursuance of this section may appeal to a court of general or quarter sessions against such conviction.

The enactments for encouraging prosecutions of disorderly houses contained in sections five, six, and seven of the Act passed in the twenty-fifth year of the reign of King George the Second, chapter thirty-six, as amended by the enactment contained in section seven of the Act passed in the fifty-eighth year of the reign of King George the Third, chapter seventy, shall, with the necessary modifications, be deemed to apply to prosecutions under this section, and the said enactments shall, for the purposes of this section, be construed as if the prosecution in such enactments mentioned included summary proceedings under this section as well as a prosecution on indictment.

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Sect. 13.**

PART III.

Definitions and Miscellaneous.

14. In this Act—

Definitions.

The expression "The Summary Jurisdiction Acts"—

- (a) as regards England means the Summary Jurisdiction (English) Acts within the meaning of the Summary Jurisdiction Act, 1879, and 42 & 43 Vict. c. 49.
- (b) as regards Ireland means within the police district of Dublin metropolis the Acts regulating the powers and duties of justices of the peace of such district or of the police of such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and the Acts amending 14 & 15 Vict. c. 93. the same.

15. In the application of this Act to Scotland—

The expression "misdemeanor" shall mean a crime and offence.

Application of Act to Scotland.

The expression "felony" shall mean a high crime and offence.

27 & 28 Vict. c. 53.
44 & 45 Vict. c. 33.

**App. B.
Sect. 15**

The expression "a justice of the peace," and the expression "two justices," shall include sheriff and sheriff substitute.

The expression "The Summary Jurisdiction Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same.

The expression "enter into a recognizance with or without sureties" shall mean "grant a bond of caution."

The expression "High Court or Court of General or Quarter Sessions" shall mean the High Court or a Circuit Court of Justiciary.

**Saving of
liability to
other criminal
proceedings.**

16. This Act shall not exempt any person from any proceeding for an offence which is punishable at common law, or under any Act of Parliament other than this Act, so that a person be not punished twice for the same offence.

**Procedure on
indictments
under Act.**

17. Every misdemeanor under this Act shall, in England and Ireland, be deemed to be an offence within, and subject to, the provisions of the Act of the session of the twenty-second and twenty-third years of the reign of Her present Majesty, chapter seventeen, intituled "An Act to prevent vexatious indictments for certain misdemeanors," and any Act amending the same, and no indictment under the provisions of this Act shall in England be tried by any court of quarter sessions.

Costs.

18. The court before which any misdemeanor indictable under this Act, or any case of indecent assault, shall be prosecuted or tried may allow the costs of the prosecution, in the same manner as in cases of felony, and may in like manner, on conviction, order payment of such costs by the person convicted; and every order for the allowance or payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid upon the same terms and in the same manner in all respects as in cases of felony.

**Repeal of
enactments
in schedule.**

19. The Acts mentioned in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of the said Schedule, except as to anything heretofore duly done thereunder, and except so far as may be necessary

for the purpose of supporting and continuing any proceeding taken or of prosecuting or punishing any person for any offence committed before the passing of this Act. **App. B. Sect. 19.**

20. Every person charged with an offence under this Act or under section forty-eight and sections fifty-two to fifty-five, both inclusive, of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, or any of such sections, and the husband or wife of the person so charged, shall be competent but not compellable witnesses on every hearing at every stage of such charge, except an inquiry before a grand jury.

Person charged and his wife to be competent witnesses.

SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
24 & 25 Vict. c. 100-	An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person.	Section forty - nine, and in section fifty-two the words "or any attempt to have carnal knowledge of any girl under twelve years of age."
38 & 39 Vict. c. 94 -	The Offences against the Person Act, 1875.	The whole Act.

App. B.*PREVENTION OF CRUELTY TO CHILDREN
ACT, 1894.

(57 & 58 VICT. CAP. 41.)

* * * * *

[17th August 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Cruelty to Children.

Punishment
for cruelty to
children.

1.—(1.) If any person over the age of sixteen years who has the custody, charge, or care of any child under the age of sixteen years, wilfully assaults, ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause such child unnecessary suffering, or injury to its health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanor; and

(a) on conviction on indictment, shall be liable, at the discretion of the court, to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding two years; and

(b) on summary conviction shall be liable, at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding six months.

(2.) A person may be convicted of an offence under this section either on indictment or by a court of summary jurisdiction notwithstanding the death of the child in respect of whom the offence is committed.

* See the Treatise on this Act by Lewis and Barrow.

(3.) If it is proved that a person indicted under this section was interested in any sum of money accruable or payable in the event of the death of the child, and had knowledge that such sum of money was accruing or becoming payable, the court, in its discretion, may

App. B.
Sect. 1 (3)

(a) increase the amount of the fine under this section so that the fine does not exceed two hundred pounds; or

(b) in lieu of awarding any other penalty under this section, sentence the person indicted to penal servitude for any term not exceeding five years.

(4.) A person shall be deemed to be interested in a sum of money under this section if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(5.) An offence under this section is in this Act referred to as an offence of cruelty.

Restrictions on Employment of Children.

2. If any person—

(a) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street, premises, or place, for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or

Restrictions
on employ-
ment of
children.

(b) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or having the custody, charge, or care of any such child, allows that child to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine p.m. and six a.m.; or

(c) causes or procures any child under the age of eleven years, or, having the custody, charge, or care of any such child, allows that child, to be at any time in any street, or in any premises licensed for the sale of any intoxicating

**App. B.
Sect. 2.**

liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale ; or

- (d) causes or procures any child under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous,

that person shall, on summary conviction, be liable, at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

Provided that—

- (i) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object, if such sale or entertainment is held elsewhere than in premises which are licensed for the sale of any intoxicating liquor but not licensed according to law for public entertainments, or if, in the case of a sale or entertainment held in any such premises as aforesaid, a special exemption from the provisions of this section has been granted in writing under the hands of two justices of the peace ; and
- (ii) Any local authority may, if they think it necessary or desirable so to do, from time to time by bye-law extend or restrict the hours mentioned in paragraph (b) of this section, either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein ; and
- (iii) Paragraphs (c) and (d) of this section shall not apply in any case in respect of which a licence granted under this Act is in force, so far as that licence extends ; and
- (iv) Paragraph (d) of this section shall not apply in the case of a person who is the parent or legal guardian of a child, and himself trains the child.

3.—(1.) A petty sessional court, or in Scotland the School Board, may, notwithstanding anything in this Act, grant a licence for such time and during such hours of the day, and subject to such restrictions and conditions as the court or board think fit, for any child exceeding seven years of age,—

**App. B.
Sect. 3 (1).**

Licences for
employment
of children.

- (a) to take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid; or
- (b) to be trained as aforesaid; or
- (c) for both purposes;

if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the court or board may, upon sufficient cause, vary, add to, or rescind any such licence.

Any such licence shall be sufficient protection to all persons acting under or in accordance with the same.

(2.) A Secretary of State may assign to any inspector appointed under section sixty-seven of the Factory and Workshop Act, 1878, specially and in addition to any other usual duties, the duty of seeing whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector has to enter, inspect, and examine a factory or workshop under section sixty-eight of the same Act.

41 & 42 Vict.
c. 16.

(3.) Where any person applies for a licence under this section he shall, at least seven days before making the application, give notice thereof to the chief officer of police for the district in which the licence is to take effect, and that officer may appear or instruct some person to appear before the authority hearing the application, and show cause why the licence should not be granted, and the authority to whom the application is made shall not grant the same unless they are satisfied that notice has been properly so given.

(4.) Where a licence is granted under this section to any person, that person shall, not less than ten days after the granting of the licence, cause a copy thereof to be sent to

App. B.
Sect. 3(4).

the inspector of factories and workshops acting for the district in which the licence is to take effect, and if he fails to cause such copy to be sent, shall be liable on summary conviction to a fine not exceeding five pounds.

39 & 40 Vict.
c. 79.
41 & 42 Vict.
c. 78.

(5.) Nothing in this or in the last preceding section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878.

*Arrest of Offender and Provision for Safety
of Children.*

Power to
take offenders
into custody.

4.—(1.) Any constable may take into custody, without warrant, any person—

(a) who within view of such constable commits an offence under this Act, or any of the offences mentioned in the Schedule to this Act, where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable; or

(b) who has committed or who he has reason to believe has committed any offence of cruelty within the meaning of this Act, or any of the offences mentioned in the Schedule to this Act, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

(2.) Where a constable arrests any person without warrant in pursuance of this section, the inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognizance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

Detention of
child in place
of safety.

5.—(1.) A constable may take to a place of safety any child in respect of whom an offence under paragraph (a) of section two of this Act has been committed, or in respect of whom an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the Schedule to this Act has been, or there is reason to believe has been, committed.

(2.) A child so taken to a place of safety, and also any child under the age of sixteen years who seeks refuge in a

place of safety, may there be detained until it can be brought before a court of summary jurisdiction, and that court may make such order as is mentioned in the next following sub-section, or may cause the child to be dealt with as circumstances may admit and require until the charge made against any person in respect of any offence as aforesaid with regard to the child has been determined by the committal for trial, or conviction, or discharge of such person.

App. B.
Sect. 5 (2).

(3.) Where it appears to a court of summary jurisdiction or any justice that an offence of cruelty within the meaning of this Act or any of the offences mentioned in the Schedule to this Act has been committed in the case of any child that is brought before such court or justice, and that the health or safety of the child will be endangered unless an order is made under this sub-section, the court or justice may, without prejudice to any other power under this Act, make such order as circumstances require for the care and detention of the child until a reasonable time has elapsed for a charge to be made against some person for having committed the offence, and, if a charge is made against any person within that time, until the charge has been determined by the committal for trial or conviction or discharge of that person, and any such order may be carried out notwithstanding that any person claims the custody of the child.

(4.) Boards of guardians, and, in Scotland, parochial boards, shall provide for the reception of children brought to a workhouse in pursuance of this Act, and where the place of safety to which a constable takes a child is a workhouse, the master shall receive the child into the workhouse if there is suitable accommodation therein for the same, and shall detain the child until the case is determined, and any expenses incurred in respect of the child shall be deemed to be expenses incurred in the relief of the poor.

6.—(1.) Where a person having the custody, charge, or Disposal of care of a child under the age of sixteen years has been—

- child by
order of
court.
- (a) convicted of committing in respect of such child an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the Schedule to this Act; or
 - (b) committed for trial for any such offence; or
 - (c) bound over to keep the peace towards such child,

App. B.
Sect. 6 (1).

by any court, that court either at the time when the person is so convicted, committed for trial, or bound over, and without requiring any new proceedings to be instituted for the purpose, or at any other time, and also any petty sessional court before which any person may bring the case, may, if satisfied on inquiry that it is expedient so to deal with the child, order that the child be taken out of the custody of the person so convicted, committed for trial, or bound over, and be committed to the custody of a relation of the child, or some other fit person named by the court (such relation or other person being willing to undertake such custody), until it attains the age of sixteen years, or for any shorter period, and may of its own motion or on the application of any person from time to time by order renew, vary, and revoke any such order; but no order shall be made under this section unless a parent of the child has been convicted of or committed for trial for the offence, or is under committal for trial for having been or has been proved to have been party or privy to the offence, or has been bound over to keep the peace towards such child.

(2.) Every order under this section shall be in writing, and any such order may be made by the court in the absence of the child; and the consent of any person to undertake the custody of a child in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind him.

(3.) Where an order is made under this section in respect of a person who has been committed for trial, then if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the order shall forthwith be void except with regard to anything that may have been lawfully done under it.

(4.) A Secretary of State in England, and in Scotland the Secretary for Scotland, and in Ireland the Lord Lieutenant of Ireland, may at any time in his discretion discharge a child from the custody of any person to whose custody it is committed in pursuance of this section, either absolutely or on such conditions as such Secretary of State, Secretary, or Lord Lieutenant, approves, and may, if he thinks fit, make rules in relation to children so committed to the custody of any person, and to the duties of such persons with respect to such children.

(5.) A Secretary of State, in any case where it appears to him to be for the benefit of a child who has been committed to the custody of any person in pursuance of this section,

may empower such person to procure the emigration of the child, but, except with such authority, no person to whose custody a child is so committed shall procure its emigration. **App. B. Sect. 6 (5).**

7.—(1.) Any person to whose custody a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were its parent, and shall be responsible for its maintenance, and the child shall continue in the custody of such person, notwithstanding that it is claimed by its parent. **Maintenance of child when committed to custody of any person under order of court.**

(2.) Any court having power so to commit a child shall have power to make the like orders on the parent of the child to contribute to its maintenance during such period as aforesaid as if the child were detained under the Industrial Schools Acts, but the limit on the amount of the weekly sum which the parent of a child may be required, under this section, to contribute to its maintenance shall be one pound a week instead of the limit fixed by the Industrial Schools Acts.

(3.) Any such order may be made on the complaint or application of the person to whose custody the child is for the time being committed, and either at the time when the order for the child's committal to custody is made, or subsequently, and the sums contributed by the parent shall be paid to such person as the court may name, and be applied for the maintenance of the child.

(4.) If a person fails to pay any sum payable by him in pursuance of any such order, he may be dealt with in like manner as if the sum were due from him in pursuance of an order under the Bastardy Law Amendment Act, 1872, or in Scotland were a sum decerned for aliment, or in Ireland where a sum ordered to be paid by him under the Summary Jurisdiction (Ireland) Acts. **35 & 36 Vict. c. 65.**

(5.) Where an order under this Act to commit a child to the custody of some relation or other person is made in respect of a person who has been committed for trial for an offence, the court shall not have power to order the parent of the child to contribute to its maintenance prior to the trial of that person.

8.—(1.) In determining on the person to whose custody the child shall be committed under this Act, the court shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a person of the same religious persuasion, or a person who gives such **Religious persuasion of person to whom child is committed.**

App. B. undertaking as seems to the court sufficient that the child shall be brought up in accordance with its own religious persuasion, and such religious persuasion shall be specified in the order.

Sect. 8 (1).

(2.) In any case where the child has been placed pursuant to any such order with a person who is not of the same religious persuasion as that to which the child belongs or who has not given such undertaking as aforesaid the court shall, on the application of any person in that behalf, and on its appearing that a fit person who is of the same religious persuasion or who will give such undertaking as aforesaid, is willing to undertake the custody, make an order to secure his being placed with a person who either is of the same religious persuasion or gives such undertaking as aforesaid.

(3.) Where a child has been placed with a person who gives such undertaking as aforesaid, and the undertaking is not observed, the child shall be deemed to have been placed with a person not of the same religious persuasion as that to which the child belongs as if no such undertaking had been given.

Interchange
of powers
under
Industrial
Schools Acts
and this Act.

9.—(1.) Where any child under the age of sixteen years is brought before a petty sessional court under circumstances authorising the court to deal with the child under the Industrial Schools Acts, the court, if it thinks fit, in lieu of ordering that the child be sent to an industrial school, may make an order under this Act for the committal of the child to the custody of a relation or person named by the court.

(2.) Where a court orders a child to be sent to an industrial school, the order may, at the discretion of the court, be made to take effect either immediately or at any later time specified therein, regard being had to the age or health of the child; and if the order is not made to take effect immediately, or if at the time specified for the order to take effect the child is deemed unfit to be sent to an industrial school, the court may commit the child to the custody of a relation or person named by the court, as provided by this Act, until the time so specified or the time when the order actually takes effect.

Warrant to
search for
and remove a
child.

10.—(1.) If it appears to any stipendiary magistrate or to any two justices of the peace, on information made before him or them on oath by any person who, in the opinion of

the magistrate or justices, is bonâ fide acting in the interests of a child under the age of sixteen years, that there is reasonable cause to suspect that such a child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of such magistrate or justices in a manner likely to cause the child unnecessary suffering or to be injurious to its health, or that any offence mentioned in the schedule to this Act has been or is being committed in respect of such a child, such magistrate or justices may issue a warrant authorising any person named therein to search for such child, and if it is found to have been or to be assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of the child, to take it to and detain it in a place of safety, until it can be brought before a court of summary jurisdiction, or authorising any person to remove the child with or without search to a place of safety and detain it there until it can be brought before a court of summary jurisdiction; and the court before whom the child is brought may cause it to be dealt with in the manner provided by section five of this Act:

App. B.
Sect. 10 (1).

Provided that—

- (a) the powers herein-before conferred on any two justices may be exercised by any one justice, if upon the information it appears to him to be a case of urgency; and
 - (b) in the case of Scotland the jurisdiction hereby conferred on a magistrate or two justices shall be exercised only by a sheriff or sheriff substitute.
- (2.) Any person issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.
- (3.) Any person authorised by warrant under this section to search for any child, or to remove any child with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child therefrom.
- (4.) Every warrant issued under this section shall be addressed to and executed by some superintendent, inspector, or other superior officer of police, who shall be accompanied by the person making the information, if such person so desire, unless the persons by whom the warrant is issued otherwise direct, and may also, if the persons by whom the

App. B. warrant is issued so direct, be accompanied by a registered
Sect. 10 (4). medical practitioner.

(5.) It shall not be necessary in any information or warrant under this section to name the child.

Power as to Habitual Drunkards.

Power as to
habitual
drunkards.

42 & 43 Vict.
c. 19.
51 & 52 Vict.
c. 19.

11. Where it appears to the court by or before which any person is convicted of the offence of cruelty within the meaning of this Act, or of any of the offences mentioned in the schedule to this Act, that that person is a parent of the child in respect of whom the offence was committed, or is living with the parent of the child, and is an habitual drunkard within the meaning of the Inebriates Acts, 1879 and 1888, the court, in lieu of sentencing such person to imprisonment, may, if it thinks fit, make an order for his detention for any period named in the order not exceeding twelve months in a retreat under the said Acts, the licensee of which is willing to receive him, and the said order shall have the like effect, and copies thereof shall be sent to the local authority and Secretary of State in like manner as if it were an application duly made by such person and duly attested by two justices under the said Acts; and the court may order an officer of the court or constable to remove such person to the retreat, and on his reception the said Acts shall have effect as if he had been admitted in pursuance of an application so made and attested as aforesaid: Provided that—

- (a) an order for the detention of a person in a retreat shall not be made under this section unless that person, having had such notice as the court deems sufficient of the intention to allege habitual drunkenness, consents to the order being made; and,
- (b) if the wife or husband of such person, being present at the hearing of the charge, objects to the order being made, the court shall, before making the order, take into consideration any representation made to it by the wife or husband; and
- (c) before making the order the court shall, to such extent as it may deem reasonably sufficient, be satisfied that provision will be made for defraying the expenses of such person during detention in a retreat.

*Evidence and Procedure.***App. B.
Sect. 12.**

12. In any proceeding against any person for an offence under this Act or for any of the offences mentioned in the schedule to this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Evidence of
accused
person.

13.—(1.) Where a justice is satisfied by the evidence of a registered medical practitioner that the attendance before a court of any child, in respect of whom an offence of cruelty within the meaning of this Act or any of the offences mentioned in the schedule to this Act is alleged to have been committed, would involve serious danger to its life or health, the justice may take in writing the deposition of such child on oath, and shall thereupon subscribe the same and add thereto a statement of his reason for taking the same, and of the day when and place where the same was taken, and of the names of the persons (if any) present at the taking thereof.

Extension of
power to take
deposition of
child.

(2.) The justice taking any such deposition shall transmit the same with his statement—

- (a)** if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and
- (b)** in any other case to the clerk of the peace of the county or borough in which the deposition has been taken;

and the clerk of the peace to whom any such deposition is transmitted shall preserve, file, and record the same.

14. Where on the trial of any person on indictment for any offence of cruelty within the meaning of this Act or any of the offences mentioned in the schedule to this Act, the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to its life or health, any deposition of the child taken under the Indictable Offences Act, 1848, or the Indictable Offences (Ireland) c. 42.

Admission of
deposition
of child in
evidence.

**App. B.
Sect. 14.**

Act, 1849, or the Petty Sessions (Ireland) Act, 1851, or this Act, shall be admissible in evidence either for or against the accused person without further proof thereof—

12 & 13 Vict.
c. 69.
14 & 15 Vict.
c. 93.

- (a) if it purports to be signed by the justice by or before whom it purports to be taken ; and
- (b) if it is proved that reasonable notice of the intention to take the deposition has been served upon the person against whom it is proposed to use the same as evidence, and that that person or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

Evidence of
child of
tender years.

15.—(1.) Where, in any proceeding against any person for an offence under this Act or for any of the offences mentioned in the schedule to this Act, the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth : and the evidence of such child, though not given on oath but otherwise taken and reduced into writing, in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848, or of section fourteen of the Petty Sessions (Ireland) Act, 1851, or of section thirteen of this Act, shall be deemed to be a deposition within the meaning of those sections respectively :

11 & 12 Vict.
c. 42.
14 & 15 Vict.
c. 93.

Provided that—

- (a.) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused ; and
- (b.) Any child whose evidence is received as aforesaid and who shall wilfully give false evidence shall be liable to be indicted and tried for such offence, and on conviction thereof may be adjudged such punishment as is provided for by section eleven of the Summary Jurisdiction Act, 1879, in the case of juvenile offenders, or in

42 & 43 Vict.
c. 49.

Ireland by section four of the Summary Jurisdiction over Children (Ireland) Act, 1884, in the case of children. App. B. Sect. 15 (1).

(2.) This section shall not apply to Scotland.

47 & 48 Vict. c. 19.

16. Where in any proceedings with relation to an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the schedule to this Act, the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to its life or health, and is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child. Power to proceed with case in absence of child.

17. Where a person is charged with an offence under this Act, or any of the offences mentioned in the schedule to this Act, in respect of a child who is alleged in the charge or indictment to be under any specified age, and the child appears to the court to be under that age, such child shall for the purposes of this Act be deemed to be under that age, unless the contrary is proved. Presumption of age of child.

18.—(1.) Where a person is charged with committing an offence under this Act or any of the offences mentioned in the schedule to this Act in respect of two or more children, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child unless upon separate informations. Mode of charging offences and limitation of time.

(2.) The same information or summons may also charge the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, but when those offences are charged together the person charged shall not be liable to a separate penalty for each.

(3.) A person shall not be summarily convicted of an offence under this Act or of an offence mentioned in the schedule to this Act unless the offence was wholly or partly committed within six months before the information was laid; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4.) Where an offence under this Act or any offence mentioned in the schedule to this Act charged against any

**App. B.
Sect. 18 (4).**

person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

Appeal from
summary
conviction to
quarter
sessions.

19. When, in pursuance of this Act, any person is convicted by a court of summary jurisdiction of an offence, and such person did not plead guilty or admit the truth of the information, or when in the case of any application under sections six, seven, or eight of this Act, other than an application to a judge or court of assize, any party thereto thinks himself aggrieved by any order or decision of the court, he may appeal against such a conviction, or order, or decision, in England and Ireland to a court of quarter sessions, and in Scotland to the High Court of Justiciary, in manner provided by the Summary Prosecutions Appeal (Scotland) Act, 1875, or any Act amending the same.

38 & 39 Vict.
c. 62.

Expenses of
prosecution.

20.—(1.) Where a misdemeanor under this Act is tried on indictment, the expenses of the prosecution shall be defrayed in like manner as in the case of a felony.

(2.) This section shall not apply to Scotland.

Guardians
may pay
costs of
proceedings.

21. A board of guardians, or in Scotland the parochial board of any parish or combination, may, out of the funds under their control, pay the reasonable costs and expenses of any proceedings which they have directed to be taken under this Act in regard to the assault, ill-treatment, neglect, abandonment, or exposure of any child, and, in the case of a union, shall charge such costs and expenses to the common fund.

Supplemental.

Provision as
to byelaws.

22. Every byelaw under this Act shall be subject—

38 & 39 Vict.
c. 55.

(a.) In England to section one hundred and eighty-four of the Public Health Act, 1875, as if every local authority in England under this Act were a local authority within the meaning of that section, but with the substitution of Secretary of State for the Local Government Board; and

30 & 31 Vict.
c. 101.

(b.) In Scotland to so much of section sixty-two of the Public Health (Scotland) Act, 1867, as provides for the confirmation of rules and regulations and

the proceedings preliminary to confirmation as if such rules and regulations included byelaws under this Act, and the local authority under this Act were a local authority within the meaning of that section, but with the substitution of the Secretary for Scotland for the Board of Supervision; and

**App. B.
Sect. 22.**

- (c.) In Ireland to section two hundred and twenty-one of the Public Health (Ireland) Act, 1878, with the substitution of Lord Lieutenant for the Local Government Board. 41 & 42 Vict. c. 52.

23.—(1.) The provisions of this Act relating to the parent of a child shall apply to the step-parent of the child and to any person cohabiting with the parent of the child, and the expression “parent” when used in relation to a child includes guardian and every person who is by law liable to maintain the child. Provision as to parents and as to meaning of “custody, charge, or care.”

(2.) This Act shall apply in the case of a parent who being without means to maintain a child fails to provide for its maintenance under the Acts relating to the relief of the poor, in like manner as if the parent had otherwise neglected the child.

- (3.) For the purposes of this Act—

Any person who is the parent of a child shall be presumed to have the custody of the child; and

Any person to whose charge a child is committed by its parent shall be presumed to have charge of the child; and

Any other person having actual possession or control of a child shall be presumed to have the care of the child.

24. Nothing in this Act shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer punishment to such child. Right of parent, etc. to administer punishment.

25. In this Act unless the context otherwise requires—
The expression “local authority” means, as regards any borough in England, the council of the borough; as regards the city of London, the common council; as regards the county of London, General definitions.

App. B.
Sect. 25.

the county council; and as regards any other place in England, the district council, and until a district council is established the urban or rural sanitary authority:

The expression "chief officer of police" means—

in the city of London and the liberties thereof, the commissioner of city police;
in the metropolitan police district, the commissioner of police of the metropolis;
elsewhere in England, the chief constable, or head constable or other officer, by whatever name called, having the chief local command of the police in the police district in reference to which such expression occurs:

The expression "street" includes any highway or other public place, whether a thoroughfare or not:

The expression "place of safety" includes any place certified by the local authority under this Act for the purposes of this Act, and also includes any workhouse or police station, or any hospital surgery, or place of the like kind:

The expression "Industrial Schools Acts" means as regards England and Scotland the Industrial Schools Act, 1866, and the Acts amending the same.

29 & 30 Vict.
c. 118.

Application
of Act to
Scotland.

26. In the application of this Act to Scotland, unless the context otherwise requires—

The Secretary for Scotland shall be substituted for a Secretary of State:

The expression "local authority" means as regards any burgh in Scotland, being either a royal burgh or a burgh returning or contributing to return a member to Parliament, the town council; as regards any police burgh in Scotland, the Commissioners of Police thereof, and as regards any county in Scotland exclusive of any such burgh, the county council:

The expression "chief officer of police" means the chief constable, or head constable, superintendent or inspector, or other officer, by whatever name called, having the chief local command of the police in the police district in reference to which such expression occurs:

The expression "court of summary jurisdiction," the expression "petty sessional court" and the expression "justice of the peace" mean the sheriff or sheriff substitute :

App. B.
Sect. 26.

The expression "misdemeanor" means crime and offence :

The expression "manslaughter" means culpable homicide :

The expression "defendant" includes panel, respondent, or person charged :

The expression "enter into a recognizance with or without sureties" means grant a bond of caution :

The expression "workhouse" means poor house.

27. In the application of this Act to Ireland, unless the context otherwise requires—

Application
of Act to
Ireland.

The Chief Secretary shall be substituted for a Secretary of State :

The expression "local authority" means the sanitary authority within the meaning of the Public Health (Ireland) Act, 1878 :

41 & 42 Vict.
c. 52.

The expression "chief officer of police" means in the police district of Dublin metropolis the chief commissioner of the police for the said district; and in any other police district the county inspector of the Royal Irish Constabulary :

The expression "committed for trial" means committed to prison or admitted to bail in manner provided in the Summary Jurisdiction (Ireland) Acts :

The expression "petty sessional court" means a court of summary jurisdiction :

The expression "Industrial Schools Acts" means the Industrial Schools Act (Ireland), 1868, and any Act amending the same.

31 & 32 Vict.
c. 25.

28.—(1.) This Act may be cited as the Prevention of Cruelty to Children Act, 1894.

Short title
and repeal.

(2.) The Prevention of Cruelty to, and Protection of, Children Act, 1889, and the Prevention of Cruelty to Children (Amendment) Act, 1894, are hereby repealed.

52 & 53 Vict.
c. 44.
57 & 58 Vict.
c. 27.

(3.) This Act shall come into operation on the twenty-first day of August one thousand eight hundred and ninety-four.

App. B.**SCHEDULE.**

24 & 25 Vict.
c. 100. Any offence under sections twenty-seven, fifty-five, or fifty-six of the Offences against the Person Act, 1861, and any offence against a child under the age of sixteen years under sections forty-three or fifty-two of that Act.

42 & 43 Vict.
c. 34. Any offence under the Children's Dangerous Performances Act, 1879.

Any other offence involving bodily injury to a child under the age of sixteen years.

APPENDIX C.

[ACTS PASSED from 1872 by which the ACCUSED and the WIFE or HUSBAND of the Accused were made COMPETENT WITNESSES, and which are now governed by the principal Act. See ss. 4 and 6.]

Session and Chapter.	Short Title.	—
35 & 36 Vict. c. 77 -	The Metalliferous Mines Regulation Act, 1872.	Section thirty-four.
35 & 36 Vict. c. 94 -	The Licensing Act, 1872.	Section fifty-one.
38 & 39 Vict. c. 17 -	The Explosives Act, 1875.	Section eighty-seven.
38 & 39 Vict. c. 63 -	The Sale of Food and Drugs Act, 1875.	Section twenty-one.
38 & 39 Vict. c. 86 -	The Conspiracy and Protection of Property Act, 1875.	Section eleven.
41 & 42 Vict. c. 12 -	The Threshing Machines Act, 1878.	Section three.
44 & 45 Vict. c. 58 -	The Army Act -	Section one hundred and fifty-six.
45 & 46 Vict. c. 75 -	The Married Women's Property Act, 1882.	Section twelve.
46 & 47 Vict. c. 3 -	The Explosive Substances Act, 1883.	Section four.

App. C.

Session and Chapter.	Short Title.	—
46 & 47 Vict. c. 51 -	The Corrupt and Illegal Practices Prevention Act, 1883.	Section fifty-three, sub-section two.
47 & 48 Vict. c. 14 -	The Married Women's Property Act, 1884.	Section one.
48 & 49 Vict. c. 69 -	The Criminal Law Amendment Act, 1885.	Section twenty.
50 & 51 Vict. c. 28 -	The Merchandise Marks Act, 1887.	Section ten.
50 & 51 Vict. c. 58 -	The Coal Mines Regulation Act, 1887.	Section sixty-two.
51 & 52 Vict. c. 64 -	The Law of Libel Amendment Act, 1888.	Section nine.
54 & 55 Vict. c. 76 -	The Public Health (London) Act, 1891.	Section one hundred and eighteen.
55 & 56 Vict. c. 4 -	The Betting and Loans (Infants) Act, 1892.	Section six.
57 & 58 Vict. c. 41 -	The Prevention of Cruelty to Children Act, 1894.	Section twelve.
57 & 58 Vict. c. 47 -	The Building Societies Act, 1894.	Section twenty-four.
57 & 58 Vict. c. 57 -	The Diseases of Animals Act, 1894.	Section fifty-seven.
57 & 58 Vict. c. 60 -	The Merchant Shipping Act, 1894.	Section four hundred and fifty-seven, sub-section two.
58 & 59 Vict. c. 24 -	The Law of Distress Amendment Act, 1895.	Section five.

APPENDIX.

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App. C.
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Session and Chapter.	Short Title.	—
58 & 59 Vict. c. 28 -	The False Alarms of Fire Act, 1895.	Section two.
58 & 59 Vict. c. 37 -	The Factory and Workshop Act, 1895.	Section forty-nine.
58 & 59 Vict. c. 40 -	The Corrupt and Illegal Practices Prevention Act, 1895.	Section two.
60 & 61 Vict. c. 60 -	The Chaff-Cutting Machines (Accidents) Act, 1897.	Section five.

App. D.**APPENDIX D.****THE CRIMINAL PROCEDURE ACT, 1865.***

(28 VICT. CAP. 18.)

An Act for amending the Law of Evidence and Practice on Criminal Trials (known as Mr. Denman's Act).

[9th May 1865.]

[The preamble of this Act states that "it is expedient that the law of evidence and practice on trials for felony and misdemeanor and other proceedings in courts of criminal judicature should be more nearly assimilated to that on trials at nisi prius."]

* * * * *

Summing up
of evidence
in cases of
felony and
misdemeanor.

2. If any prisoner or prisoners, defendant or defendants, shall be defended by counsel, but not otherwise, it shall be the duty of the presiding judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel whether he or they intend to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants; and upon every trial for felony or misdemeanor, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant, or his or their counsel respectively, shall be allowed if he or they shall think fit, to open his or their case or cases respectively; and after the conclusion of such opening or of all such openings, if more than one, such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present.

* * * * *

* See observations of BLACKBURN, J., as to the duty of counsel for the prosecution in *Reg. v. Berens* (1865), 4 F. & F. 842; *sub. nom. Reg. v. Holchester*, 10 Cox C. C. 226.

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